BELLSOUTH TELECOMMUNICATIONS, INC.

DIRECT TESTIMONY OF JOHN A. RUSCILLI

BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

DOCKET NO. 2000-516-C

DECEMBER 7, 2000

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC. ("BELLSOUTH") AND YOUR BUSINESS ADDRESS.

A. My name is John Ruscilli. I am employed by BellSouth as Senior Director for State Regulatory for the nine-state BellSouth region. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR BACKGROUND AND EXPERIENCE.

A. I attended the University of Alabama in Birmingham where I earned a Bachelor of Science Degree in 1979, and a Master's Degree in Business Administration in 1982. After graduation I began employment with South Central Bell as an Account Executive in Marketing, transferring to AT&T in 1983. I moved to BellSouth in late 1984 as an analyst in Market Research, and in late 1985 I transferred into the Pricing and Economics organization with various responsibilities for

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business case analysis, tariffing, demand analysis and price regulation. I served as a subject matter expert on ISDN tariffing in various Commission and PSC staff meetings in Florida, Alabama and Georgia, and I testified in the ISDN hearings in Tennessee. I later moved into the State Regulatory and External Affairs organization with responsibility for implementing both state price regulation requirements and the provisions of the Telecommunications Act of 1996 (the "Act"), through arbitration and 271 hearing support. In July 1997, I became Director of Regulatory and Legislative Affairs for BellSouth Long Distance, Inc., with responsibilities that included obtaining the necessary certificates of public convenience and necessity, testifying, providing FCC and state PSC support, and coordinating Federal and State compliance reporting and tariffing for all 50 states and the FCC. I assumed my current position in July 2000.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY BEING FILED TODAY?

A. The purpose of my testimony is to present BellSouth's position on the unresolved issues in the negotiations between BellSouth and Adelphia Business Solutions of South Carolina, Inc. ("Adelphia"). BellSouth acknowledges Adelphia's initial request for negotiations in South Carolina as occurring on May 4, 2000. BellSouth and Adelphia have negotiated in good faith and have resolved the vast majority of the issues raised during the negotiations. There are, however, issues

about which the companies have been unable to reach an agreement. Five issues are included in the Petition for Arbitration (the "Petition") filed by Adelphia with the Public Service Commission of South Carolina ("Commission") on October 11, 2000. BellSouth has added a sixth issue in its Response to Adelphia's Petition, and I also address that issue in my testimony.

Issue 1: (Attachment 3, Sections 1.8 and 2.3)

(A) May Adelphia charge its tariffed rates to BellSouth for leased facility interconnection; (B) If not, should the definition of serving Wire Center preclude Adelphia from receiving symmetrical compensation from BellSouth for leased facility interconnection?

Q. WHAT IS BELLSOUTH'S POSITION ON PART (A) OF THIS ISSUE?

A. BellSouth's position is that where leased facility interconnection being providing by the parties is for like services, the charges must be symmetrical. If Adelphia is going to pay BellSouth UNE TELRIC rates for local interconnection facilities, Adelphia must charge BellSouth UNE TELRIC rates for like services in order for the rates to be symmetrical. If Adelphia wants to charge BellSouth Adelphia's filed and effective tariffed rates (or BellSouth's tariffed rates) for local interconnection facilities, Adelphia must pay BellSouth's tariffed rates for like facilities. However, in Issue 1(A), Adelphia wants to charge BellSouth rates from Adelphia's tariff and only pay BellSouth UNE TELRIC rates. Adelphia's

position would not provide for symmetrical compensation, and is not appropriate.

Q. WHAT IS BELLSOUTH'S POSITION ON PART (B) OF THIS ISSUE?

A. BellSouth's proposal agrees that symmetrical compensation should be provided when like services are provided. Adelphia, like BellSouth, is entitled to receive compensation for the facilities used to perform the function for which the compensation is intended. The way that Adelphia chooses to configure its own network, however, determines what type and how much compensation it receives. According to Adelphia's Petition (paragraph 42), it has not yet turned up its switch in South Carolina. However, Adelphia apparently plans, initially, to install a single switch in South Carolina. With a single switch in the state, Adelphia cannot transport traffic between switches. Adelphia, therefore, should not be allowed to charge rate elements designed to compensate for transport of traffic between switches. The rates proposed by BellSouth, therefore, are symmetrical. It is the choice of network configuration between BellSouth and Adelphia that is asymmetrical.

Q. IS BELLSOUTH CHARGING ADELPHIA MORE FOR THE "SAME FACILITY"?

A. No, the facilities in question are not the same. Whereas Adelphia may ultimately deploy one switch in a LATA, BellSouth has at least one switch in each local calling area that is within the LATA, as explained more fully later in my testimony. In that case, transport services necessary to complete a call between a BellSouth end user and an Adelphia end user between local calling areas typically consist of two sets of rate elements. The first set is a flat-rated local channel which is the charge for the facility that connects the Competitive Local Exchange Carrier's ("CLEC's") physical location, i.e., Point of Interface, to the BellSouth wire center that serves that location (the serving wire center). The second set of rate elements are distance sensitive charges that apply for facilities that are provided between BellSouth wire centers.

Q. PLEASE GIVE AN EXAMPLE SHOWING APPLICABILITY OF THE TWO SETS OF RATE ELEMENTS.

A. Where BellSouth's end user originates a call to Adelphia's end user, BellSouth has the responsibility for delivering the call over its interoffice facility to the Point of Interface ("POI") in the local calling area. Adelphia is entitled to reciprocal compensation at the local channel flat rate for delivering the call from the POI to Adelphia's end user. Where Adelphia's end user originates a call to BellSouth's end user, Adelphia is responsible for delivering the traffic to the POI; BellSouth then charges Adelphia reciprocal compensation for the use of BellSouth's network, which includes tandem switching, common transport or

dedicated interoffice channel transport, and end office switching. Because the facilities on each side of the POI are not the same, the applicable reciprocal compensation rates are not the same.

Q. WHAT IS MEANT BY THE TERM "POINT OF INTERFACE"?

A. The term "Point of Interface" is used in the Agreement, and in this issue, to describe the point where the two networks physically connect. In other words, the Point of Interface is the place where facilities that Adelphia builds connect to facilities built by BellSouth. The Point of Interconnection is the point at which the originating Party delivers its originated traffic to the terminating Party's first point of switching on the terminating Party's common (shared) network for call transport and termination. This concept is more fully explained in Issue 6 of my testimony.

Q. WHAT DOES BELLSOUTH REQUEST OF THE COMMISSION ON THIS ISSUE?

A. BellSouth simply requests that the Commission rule on Issue 1(A) that if one party charges tariffed rates for leased facility interconnection, the other party is also entitled to charge tariffed rates. BellSouth requests that the Commission rule on Issue 1(B) that each carrier must bear the responsibility for its choice of network deployment and interconnection; in other words, where a party is providing a local channel, it should be

compensated at the rates for a local channel. Where a party is providing interoffice facility functions such as common transport or dedicated interoffice channel transport, it should be compensated at the rates for common transport or dedicated interoffice channel transport.

Issue 2: (Attachment 3, Sections 6.1.9 and 6.1.9.1)

(A) Should BellSouth be permitted to define its obligation to pay reciprocal compensation to Adelphia based solely upon the physical location of Adelphia's customers?

(B) Should BellSouth be able to charge originating access to Adelphia on all calls going to a particular NXX code based upon the location of any one customer?

Q. WHAT IS THE DISPUTE IN THIS ISSUE?

A. The dispute in this issue is whether assignment of NPA/NXXs by Adelphia can lead to the application of reciprocal compensation to long distance calls, which is improper. This issue was most recently addressed by the Florida Commission in the arbitration proceeding between BellSouth and Intermedia (Order No. PSC-00-1519-FOF-TP, Docket No. 991854-TP, dated August 22, 2000). In that proceeding, the Florida Commission determined that until Intermedia could provide information to permit proper billing, Intermedia could not give numbers to customers who are physically located outside the rate center where

the NPA/NXX code is assigned. Specifically, the Florida Commission ruled at page 43 of its Order:

> *If Intermedia intends to assign numbers outside of the areas with which they are traditionally associated, Intermedia must provide information to other carriers that will enable them to properly rate calls to those numbers. We find no evidence in the record indicating that this can be accomplished.*
>
> *Based on the foregoing, we find it appropriate that the parties be allowed to establish their own local calling areas. Nevertheless, the parties shall be required to assign numbers within the areas to which they are traditionally associated, until such time when information necessary for the proper rating of calls to numbers assigned outside of those areas can be provided.*

Since the time of the Intermedia arbitration, BellSouth has identified a means to handle the rating issue the Florida Commission recognized. BellSouth would propose not to charge its end user for a long distance call, even though a long distance call had been made. This treatment is similar to the rating of calls from BellSouth end users to 800 numbers. The reason for this approach is that, like 800 service, Adelphia is incurring the long distance costs in this case and, if it chooses to do so, it may recover these costs from the end user that subscribes to the Adelphia service. Of course, like 800 service, this is a long distance service. For example, if a BellSouth customer in Columbia, South

Carolina calls a BellSouth customer in Orangeburg, the call originates in one local calling area and terminates in another local calling area; therefore, it is an intraLATA toll call. Likewise, if a BellSouth customer in Columbia calls an Adelphia customer in Orangeburg, South Carolina, it is still an intraLATA toll call, even if those two customers have telephone numbers with the same NPA/NXX. BellSouth should not be required to pay reciprocal compensation for such a call, because it clearly is long distance traffic. Adelphia is providing the long distance to its customer and either Adelphia or Adelphia's customer should pay for the service.

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. BellSouth's position on Issue 2(A) is that the parties should be obligated to pay reciprocal compensation for calls to numbers with NXX codes associated with the same local calling area, only if the call actually terminates to the other party's end users physically located in the same local calling area. BellSouth's position on Issue 2(B) is that "Each Party shall utilize its NPA/NXXs in such a way and will provide the necessary information so that the other Party shall be able to distinguish Local from IntraLATA Toll traffic for the other Party's originated traffic." (Attachment 3, Section 6.1.9) If Adelphia does not provide such information to BellSouth, BellSouth has no way of knowing which calls are local and which calls are long distance.

BellSouth is asking that Adelphia separately identify any number assigned to an Adelphia end user whose physical location is outside the local calling area associated with the NPA/NXX assigned to that end user, so that BellSouth will know whether to treat the call as local or long distance. Providing that Adelphia will separately identify such traffic, for purposes of billing and intercarrier compensation, BellSouth would not object to permitting Adelphia to assign numbers out of an NPA/NXX to end users located outside the local calling area with which that NPA/NXX is associated. Because of this freedom, Adelphia can elect to give a telephone number to a customer who is physically located in a different local calling area than the local calling area where that NPA/NXX is assigned. If Adelphia, however, chooses to give out its telephone numbers in this manner, calls originated by BellSouth end users to those numbers are not local calls. Consequently, such calls are not local traffic under the agreement and no reciprocal compensation applies.

Q. WHAT DO YOU MEAN WHEN YOU SAY AN NPA/NXX IS ASSIGNED TO A RATE CENTER?

A. When Adelphia, or any other carrier, is given an NPA/NXX code by the North American Numbering Plan Administrator, the carrier must assign that NPA/NXX code to a rate center. All other carriers use this assignment information to determine whether calls originated by its customers to numbers in that NPA/NXX code are local or long distance

calls. For example, assume that the administrator assigns the 803/336 NPA/NXX to Adelphia. (See Exhibit JAR-1) Adelphia tells the administrator where 803/336 is assigned. Let's say Adelphia assigns the 803/336 code to the Orangeburg, South Carolina rate center. When a local carrier's customer calls a number in the 803/336 code, the local carrier bills its customer based upon whether a call from the location where the call originates to the Orangeburg rate center is a local call or a long distance call. If a BellSouth customer in the Orangeburg local calling area calls a number in the 803/336 code in this example, BellSouth treats the call as a local call for purposes of billing its Orangeburg customer. Likewise, if a BellSouth customer in Columbia calls a number in the 803/336 code, BellSouth would bill the customer for an intraLATA long distance call.

Q. IS ADELPHIA RESTRICTED TO GIVING NUMBERS ASSIGNED TO A PARTICULAR RATE CENTER TO CUSTOMERS WHO ARE PHYSICALLY LOCATED IN THAT SAME RATE CENTER?

A. No. In the example above, Adelphia is not restricted to giving numbers in the 803/336 code only to customers that are physically located in the Orangeburg, South Carolina rate center. Adelphia is permitted to assign a number in the 803/336 code to any of its customers regardless of where they are physically located. Again, BellSouth is not attempting to restrict Adelphia's ability to do this.

Adelphia could assign a number, say 803-336-5555, to one of its customers who is physically located in Orangeburg, South Carolina. A BellSouth customer in Orangeburg who calls 803-336-5555 would be billed as if he or she made a local call. BellSouth agrees that this is a local call and, therefore, appropriate reciprocal compensation should apply.

Hypothetically, however, what happens if Adelphia disassociates the physical location of a customer with a particular telephone number from the rate center where that NPA/NXX code is assigned? Assume that Adelphia gives the number 803-336-2000 to one of its customers in Columbia. If a BellSouth customer in Orangeburg calls 803-336-2000, BellSouth will bill its customer in Orangeburg as if the customer made a local call. However, BellSouth would hand off the call to Adelphia, and Adelphia would then carry the call from that point to its end user in Columbia. The end points of the call are in Orangeburg and Columbia, and therefore, the call is a long distance call. To use a more extreme example, Adelphia could elect to assign another number, say 803-336-3000 to one of its customers who is physically located in New York. A BellSouth customer in Orangeburg who calls 803-336-3000 would be billed as if he made a local call, but the call would actually terminate in New York, which clearly would be a long distance call. Under Adelphia's proposal, BellSouth would pay reciprocal compensation on those calls from Orangeburg to Columbia or from Orangeburg to New

York, which are clearly long distance calls and not subject to reciprocal compensation.

Q. IS TRAFFIC JURISDICTION ALWAYS DETERMINED BY THE RATE CENTERS WHERE THE ORIGINATING AND TERMINATING NPA/NXXs ARE ASSIGNED, AS INDICATED IN ADELPHIA's PETITION?

A. No. Traffic jurisdiction based on rate center assignment may be used for retail end user billing, but not for inter-company compensation purposes. The FCC has made it clear that traffic jurisdiction is determined based upon the originating and terminating end points of a call, not the NPA/NXXs of the calling or called number. One example is originating Feature Group A ("FGA") access service. With FGA, a customer dials a 7 (or 10) digit number and receives a second dial tone from the distant office. Then the customer, as in the case before equal access, enters a code and dials the long distance number. Even though the originating end user dials a number that appears local to him or her, no one disputes that originating FGA traffic is switched access traffic with respect to jurisdiction and compensation between the involved companies.

Another example is Foreign Exchange (FX) service. FX service is exchange service furnished to a subscriber from an exchange other than the one from which the subscriber would normally be served. The

service is provisioned via dedicated facilities from the subscriber's premises to the foreign office. Here again, it appears to the originating customer that they are making a local call when, in fact, the terminating location is outside the local calling area. Further, because the call to the FX number appears local and the calling and called NPA/NXXs are assigned to the same rate center, the originating end user is not billed for a toll call. Despite the fact that the calls appear to be local to the originating caller, FX service is clearly a long distance service. The reason the originating end user is not billed for a toll call is that the receiving end user has already paid for the charges in the form of dedicated access from the real NPA/NXX office to the FX (or Virtual FX as Adelphia calls it) office. There are charges for this function and they are being paid by the customer that is benefiting from the FX service.

Q. WHAT IS THE CLOSEST PARALLEL SERVICE TO THE "VIRTUAL NXX" ISSUE ADELPHIA HAS RAISED IN ITS PETITON?

A. The closest parallel is 800 service. While there are some comparable characteristics to the previously described FGA and FX service, Adelphia apparently does not use lines dedicated to a particular customer for transporting the call between rate centers. Instead, the calls in this issue are placed to a "toll free" number and routed over trunking facilities to a distant location that would normally incur a toll charge for the originating customer. By utilizing enough NPA/NXX codes, Adelphia could provide this "toll free" 800-like service throughout

the state, or even throughout the nation. Just as it is clear that 800 service is not local and that access charges, rather than reciprocal compensation, apply to 800 service, it is also clear that service provided through the use of NPA/NXXs outside the local calling area where the NPA/NXX is assigned also is not local and that reciprocal compensation should not apply to that service.

Q. WHEN ADELPHIA ASSIGNS NUMBERS IN THE MANNER YOU HAVE DESCRIBED, IS IT ATTEMPTING TO DEFINE ITS OWN LOCAL CALLING AREA?

A. When Adelphia assigns numbers in the manner described, Adelphia is not necessarily attempting to define a different local calling area for its customers than the local calling area offered by BellSouth. In fact, in the previous hypothetical example of the 803/336 code that Adelphia assigns to Orangeburg, Adelphia does not need to have any customers who are physically located in the Orangeburg local calling area. What Adelphia is doing is offering free interexchange calling to customers of other LECs (i.e. BellSouth). Adelphia is offering a service that allows BellSouth's local service customers to make "local" calls to selected customers of Adelphia who are physically located in a different local calling area. At best, in the Orangeburg example, Adelphia is attempting to redefine BellSouth's local calling area, but only in those instances in which a BellSouth end user places a call to selected Adelphia end users.

Adelphia, however, is only permitted to define the local calling area for its own customers. If, in the example, Adelphia had any of its own local service customers in Orangeburg and offered those customers the ability to call Columbia without long distance charges, then it could be said that Adelphia was offering a local calling area in Orangeburg that was different from BellSouth's. The local calling area, however, would be defined that way only for those customers to whom Adelphia provided local service. Adelphia is free to design whatever local calling area it wants for its customers. Adelphia, however, is not free to determine the local calling area for BellSouth customers. Specifically, Adelphia cannot provide interexchange service to BellSouth's local end-user customers and call that service local, even if it is provided on a toll-free basis.

Q. HOW DOES THE RESOLUTION OF THIS ISSUE IMPACT THE DEGREE OF LOCAL COMPETITION IN SOUTH CAROLINA?

A. It does not. The service at issue here has nothing to do with local competition. Using the Orangeburg example, the service described in this issue does not create a local service, let alone any local service competition, in Orangeburg. Local service competition is only created where Adelphia offers local service to its own customers. The service at issue here is offered to BellSouth's local service customers in Orangeburg, regardless of whether Adelphia has any local service

customers physically located in Orangeburg. When Adelphia allows a BellSouth customer in Orangeburg to make a toll free call to one of its true 800 service numbers, no local competition is created in Orangeburg. Likewise, when Adelphia assigns a number out of the 803/336 code to one if its customers in Columbia, no local competition is created in Orangeburg (where the 803/336 code is assigned). In this case, Adelphia has no contact or business relationship with the BellSouth customers for use of this service. These customers remain, in fact, BellSouth's local service customers. There is nothing that Adelphia is providing in this case that even resembles local service. Yet, Adelphia claims that it should be paid reciprocal compensation for providing this service.

Q. MR. GATES, AT PAGE 16, STATES THAT THE COSTS INCURRED BY BELLSOUTH DO NOT CHANGE BASED ON THE LOCATION OF ADELPHIA's CUSTOMERS. PLEASE COMMENT.

A. This statement misses the point. Reciprocal compensation is to cover the cost of transporting and terminating local calls. It is the terminating carrier that incurs these costs, and, therefore, collects the money. Second, as I have just described, the end points of a call determine whether or not a call is local. Clearly, when a BellSouth customer calls an Adelphia customer in a different local calling area, it is not a local call, regardless of where Adelphia's switch is located, and regardless of

the cost BellSouth incurs to get the call to that switch. Adelphia is simply not entitled to reciprocal compensation for these calls.

Q. BEGINNING ON PAGE 18 OF HIS TESTIMONY, MR. GATES DISCUSSES THREE ALLEGED "SIGNIFICANT NEGATIVE IMPACTS" OF BELLSOUTH'S PROPOSED LANGUAGE WITH RESPECT TO ASSIGNMENT OF CODES. PLEASE ADDRESS EACH OF THESE ALLEGATIONS.

A. Mr. Gates makes the following three allegations that occur with BellSouth's proposed language:

- BellSouth would be able to evade its reciprocal compensation obligations under the 1996 Act;
- Contrary to one of the fundamental goals of the 1996 Act, the language would have a negative impact on the competitive deployment of dial-up Internet services; and
- BellSouth would have a competitive advantage over Adelphia in the ISP market.

BellSouth disagrees. First, BellSouth would not be evading any reciprocal compensation obligations under the Act. The Act requires reciprocal compensation for the transportation and termination of local traffic. The traffic under discussion, as shown above, is not local. Second, BellSouth's position has no impact on Adelphia's ability to serve ISPs. Adelphia is free to target and select customers, and to

assign telephone numbers as it chooses. BellSouth's position is consistent with long-standing FCC precedent that calls which originate and terminate in different local calling areas are not local and, therefore, are not subject to reciprocal compensation.

Third, BellSouth's proposed language would not grant BellSouth any advantage in the ISP market. Due to the FCC's exemption of ISP-bound traffic from access charges, BellSouth is limited to charging its ISP customers the tariffed business local exchange rate. CLECs like Adelphia generally have more flexibility in their pricing.

Q. ON PAGE 18, MR. GATES STATES THAT "IGNORING THE HISTORICAL PRACTICE OF RATING A CALL AS LOCAL BASED UPON THE NXX CODES OF THE ORIGINATING AND TERMINATING NUMBER WOULD GIVE BELLSOUTH THE ABILITY TO RE-CLASSIFY LOCAL CALLS AS TOLL CALLS." IS THIS A VALID STATEMENT?

A. Absolutely not. To the contrary, Adelphia is the party attempting to reclassify the nature of the call, from toll to local. An FX call or Virtual NXX call that crosses local calling area boundaries is a toll call, and it is not subject to reciprocal compensation. If the provider of the FX or Virtual NXX service chooses not to bill its customer for toll service, that is its choice; however, the manner in which the provider elects to bill its end users for the service does not change the nature of the call. An

example of this is FX service. In this instance, the call originates and terminates in different local calling areas. While the originating party may be charged as if this is a local call, the terminating party is paying for the call through FX charges.

Q. ON PAGE 24, MR. GATES CITES THE JUNE 21, 2000 FCC ORDER IN THE TSR WIRELESS COMPLAINT CASE AGAINST US WEST AS EVIDENCE THAT "THE LOCAL COMPETITION ORDER REQUIRES A CARRIER TO PAY THE COST OF FACILITIES USED TO DELIVER TRAFFIC ORIGINATED BY THAT CARRIER TO THE NETWORK OF ITS CO-CARRIER, WHO THEN TERMINATES THAT TRAFFIC AND BILLS THE ORIGINATING CARRIER FOR TERMINATION COMPENSATION." PLEASE RESPOND.

A. I think the case Mr. Gates relies upon is very important and does provide clear direction on this point. That case, however, does not require BellSouth to haul traffic from a remote local calling area to Adelphia's single point of interface in a LATA.

To the contrary, that Order is completely consistent with BellSouth's position in this case. I am not an attorney, but I do have experience reading and implementing numerous FCC orders. Based on my experience, it appears that the FCC determined a couple of things in the TSR Order. First, the FCC identified the Major Trading Area ("MTA") as the local calling area for telecommunications traffic between

a LEC and a CMRS provider as defined in 47 CFR Section 51.701(b)(2). An MTA typically is a large area that may encompass multiple LATAs, and an MTA often crosses state boundaries.) That really isn't in dispute and wasn't in dispute in the TSR case. Second, the FCC determined that this rule, when read in conjunction with 47 CFR Section 51.703(b), requires LECs to deliver, without charge, traffic to CMRS providers anywhere within the local calling area (or MTA) in which the call originated. This point is very important and the FCC order deserves quoting. The FCC in the TSR order, at page 22 (paragraph 31), said that local exchange carriers are required "to deliver, without charge, traffic to CMRS providers anywhere within the MTA in which the call originated, with the exception of RBOCs...." (emphasis added) The FCC did not say, in this case, that local exchange carriers were required to deliver calls to CMRS providers to points outside the MTA in which the call originated, but rather only had to deliver such traffic at no charge within the MTA where the call originated.

With regard to traffic that originates on the incumbent local exchange carrier's network, the relevant area in which the traffic must be delivered free of charge is defined in CFR Section 51.701(b)(1) as the "local service area established by the state commission." To clarify, Section 51.701(b) provides as follows:

(b) Local telecommunications traffic. For purposes of this subpart, local telecommunications traffic means:

(1) telecommunications traffic between a LEC and a telecommunications carrier other than a CMRS provider that originates and terminates within a local service area established by the state commission; or

(2) telecommunications traffic between a LEC and a CMRS provider that, at the beginning of the call originates and terminates within the same Major Trading Area, as defined in § 24.202(a) of this chapter."

Therefore, with regard to LEC to CLEC traffic, BellSouth is not required to deliver the traffic without charge to Adelphia to any point outside of the "local service area established by the state commission." This is entirely consistent with BellSouth's position. We are only obligated to deliver local calls to Adelphia at a point within the local calling area where the call originates. The portions of the FCC order quoted on page 23 of Mr. Gates' testimony must be read in the complete context of this order, which clearly limits BellSouth's obligation to deliver traffic to Adelphia at no charge to only within the local calling area.

Q. ON PAGE 27, MR. GATES STATES THAT "THE COSTS ASSOCIATED WITH ACCESSING THE INTERNET WOULD INCREASE" IF BELLSOUTH CONTRACTUALLY LIMITS

RECIPROCAL COMPENSATION BASED ON THE LOCATION OF CUSTOMERS. PLEASE COMMENT.

A. Mr. Gates' statement highlights the fact that Adelphia is not so much interested in flexible use of NXX codes as it is in receiving reciprocal compensation for traffic which is not local traffic. Reciprocal compensation is designed to compensate a carrier for transporting and terminating a local call. Long distance calls have different compensation mechanisms that apply and would continue to apply in the cases we have been discussing. BellSouth is not attempting to restrict Adelphia's use of NXX codes. However, BellSouth does insist that such use of NXX codes not be allowed to disguise toll calls as local calls for the purpose of receiving reciprocal compensation.

In the FX example I described earlier, BellSouth charges the FX customer appropriate charges to cover BellSouth's costs. Adelphia may do the same. For example, the rate elements of BellSouth's FX service include local channel, exchange access, mileage charges, and interexchange terminals (See BellSouth General Subscriber Service Tariff, Section A9). When Adelphia assigns telephone numbers to a customer in a way that allows callers to make a long distance call to that customer but not be charged for a long distance call, Adelphia may recover its costs from the customer who is benefiting. Adelphia, however, may not try to recover those costs from BellSouth.

Likewise, in the 800 service example discussed previously in my testimony, the end user who dials the 800 number is charged for a local call to get to the 800 number. The customer subscribing to the 800 service, however, pays for the 800 service charges in lieu of the calling party paying toll usage charges. The customer benefiting from the service is the one who pays for the service, as should be the case with Virtual FX or Virtual NXX calls.

Q. WHAT OTHER COMMISSIONS BESIDES FLORIDA HAVE ADDRESSED WHETHER THE SERVICE DESCRIBED IN THIS ISSUE IS LOCAL OR INTEREXCHANGE?

A. The Maine, Texas and Illinois Commissions have determined that this is not local service. Texas and Illinois have further stated that reciprocal compensation should not apply in Virtual FX/Virtual NXX situations.

Q. BRIEFLY DESCRIBE THE MAINE COMMISSION'S ORDER THAT YOU REFERRED TO ABOVE.

A. The Maine Commission's Order was issued on June 30, 2000 in Docket Nos. 98-758 and 99-593. The service at issue in that order is the same type of service described in this issue. (Order at p. 4). Brooks Fiber ("Brooks" – a subsidiary of MCI WorldCom) had been assigned 54 NPA/NXX codes that it had subsequently assigned to various exchanges that are outside the Portland, Maine local calling area.

Brooks then assigned numbers from those codes to its customers who were physically located in Portland. The Maine Commission was trying to determine whether Brooks was entitled to retain the NPA/NXX codes used for the service. If the service was local, Brooks was entitled to the codes; if the service was interexchange, Brooks Fiber had to relinquish the codes. The Maine Commission concluded that the service was interexchange. Since Brooks did not have any customers at all in the rate centers where 45 of the codes were assigned, the Maine Commission ordered the Numbering Plan Administrator to reclaim those codes (Order at p. 29)

Now, there is a potential misunderstanding that could arise when reading the Maine Order. There are several references to ISP in the Maine Order, but that is because Brooks Fiber had only given numbers in the NPA/NXX code to ISPs. Significantly, the Maine Order does not address the ISP reciprocal compensation issue that this Commission has previously addressed. Neither the Maine Commission findings on the nature of this traffic nor BellSouth's position on this issue depend on whether the number is given to an ISP. The same findings and the same position apply regardless of the type of customer who has been given the number. It is just a fact in the Maine case that Brooks Fiber had only given numbers to ISPs; therefore, there are references to ISPs in the Order.

Q. WHAT DO THE ILLINOIS AND TEXAS COMMISSIONS' ORDERS SAY ABOUT THIS ISSUE?

A In the Illinois Commerce Commission's Order in Docket 00-0332, Level 3 Communications, Inc. Arbitration case, dated August 30, 2000, the Commission states at pages 9-10:

> *(b) The reciprocal compensation portion of the issue is straightforward. The FCC's regulations require reciprocal compensation only for the transport and termination of "local telecommunications traffic," which is defined as traffic "that originates and terminates within a local service area established by the state commission." 47 C.F.R. 51.701 (a)-(b)(1). FX traffic does not originate and terminate in the same local rate center and therefore, as a matter of law, cannot be subject to reciprocal compensation. Whether designated as "virtual NXX," which Level 3 uses, or as "FX," which AI [Ameritech Illinois] prefers, this service works a fiction. It allows a caller to believe that he is making a local call and to be billed accordingly when, in reality, such call is traveling to a distant point that, absent this device, would make the call a toll call. The virtual NXX or FX call is local only from the caller's perspective and not from any other standpoint. There is no reasonable basis to suggest that calls under this fiction can or should be considered local for purposes of imposing reciprocal compensation. Moreover, we are not*

alone in this view. The Public Utility Commission of Texas recently determined that, to the extent that FX-type calls do not terminate within a mandatory local calling area, they are not eligible for reciprocal compensation. See, Docket No. 21982, July 13, 2000. On the basis of the record, the agreement should make clear that if an NXX or FX call would not be local but for this designation, no reciprocal compensation attaches. [Emphasis added.]

Q. HOW DOES BELLSOUTH'S POSITION COMPARE TO THE MAINE, ILLINOIS AND TEXAS COMMISSIONS' ORDERS?

A. BellSouth's position is completely consistent with these three orders. Most importantly, the Maine Commission found that the service was interexchange. (Order at pps. 4, 8-12, 18). The Maine Commission concluded that this service and FX service have some parallels but the closest parallel is 800 service. (Order at pps. 11-12) The Maine Commission found that Brooks is not attempting to define its local calling area with this service. (Order at p 14) Finally, the Maine Commission concluded that this service has no impact on the degree of local competition. (Order at p. 13) The Illinois and Texas Commissions' Orders went a step further, specifying that Virtual FX or NXX calls which do not terminate within a mandatory local calling area are not eligible for reciprocal compensation. Again, none of these

findings depend on whether the number is given to an ISP or another type of customer.

Q. HAVE ANY STATE COMMISSIONS IN THE BELLSOUTH REGION ADDRESSED THIS ISSUE?

A. Yes, both the Florida and Georgia Commissions have ruled in BellSouth's favor on this issue.

Q. COULD YOU BRIEFLY DESCRIBE THE FLORIDA AND GEORGIA DECISIONS?

A. As previously quoted on pages 7-8 of my testimony, the Florida Commission found in its order in the Intermedia arbitration case that Intermedia should not be permitted to assign numbers outside of the local area with which they are traditionally associated until Intermedia can provide information to BellSouth necessary for the proper rating of such calls. On July 5, 2000, in Docket No. 11644-U (Intermedia arbitration), the Georgia Commission ordered that Intermedia be allowed to assign its NPA/NXXs in accordance with the establishment of its local calling areas, provided that it furnish the necessary information to BellSouth and all other telecommunication carriers that they may identify local and toll traffic and provide for the proper routing and billing of those calls.

Q. WHAT IS BELLSOUTH REQUESTING OF THIS COMMISSION?

A. BellSouth is asking the Commission to follow the lead of the Commission rulings described above. BellSouth is not asking the Commission to restrict Adelphia's ability to allocate numbers out of its assigned NPA/NXX codes in whatever manner it sees fit. BellSouth simply requests the Commission to determine that if Adelphia assigns telephone numbers to customers that are physically located in a different local calling area than the local calling where the NPA/NXX is assigned, calls originated by BellSouth end users in the local calling area where the NPA/NXX is assigned to those numbers are not local calls. Such calls are not considered local traffic under the agreement and, therefore, no reciprocal compensation should apply. Furthermore, this Commission should find that if Adelphia assigns NPA/NXX numbers outside the assigned local calling area, Adelphia must provide the necessary information to BellSouth so that BellSouth can rate the calls appropriately.

Issue 3: (Attachment 3, Section 6.8)

Should Internet Protocol Telephony be excluded from local traffic subject to reciprocal compensation?

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. BellSouth believes that the jurisdiction of a call is determined by the end points of a call, not the technology used to transport the call between those end points. Therefore, phone-to-phone calls, using IP Telephony that originate and terminate in different local calling areas are not local and are subject to switched access today. Under no circumstance would such calls be subject to reciprocal compensation.

Q. ADELPHIA, ON PAGE 35 OF MR. GATES' TESTIMONY, STATES THAT THIS ARBITRATION IS NOT THE APPROPRIATE FORUM TO ADDRESS THE QUESTION OF WHETHER IP TELEPHONY SHOULD BE EXCLUDED FROM RECIPROCAL COMPANSATION OR SUBJECTED TO OTHER FORMS OF TRADITIONAL TELECOMMUNICATIONS REGULATIONS. DO YOU AGREE?

A. Yes, BellSouth agrees with Adelphia, although our reasons are different. As with the issue of reciprocal compensation for ISP-bound traffic, the issue as to whether interstate switched access charges apply to long distance IP Telephony is one that primarily should be addressed by the FCC. IP Telephony should not be an issue in an arbitration of a local interconnection agreement. This Commission, however, can address the inter-carrier compensation questions regarding intrastate/intraLATA, intrastate/interLATA and local traffic.

Q. WHAT IS IP TELEPHONY?

A. The term "IP Telephony" refers to any telecommunications service that is provided using Internet Protocol for one or more segments of the call. IP Telephony is, in very simple and basic terms, a mode or method/protocol for completing a telephone call, at least partially in a digital manner. The word "Internet" in Internet Protocol Telephony refers to the name of the protocol; it does not mean that the service must use the World Wide Web; IP Telephony calls can be, and in many cases are, completed over private networks.

Currently there are various technologies used to transmit telephone calls, of which the most common are analog and digital. In the case of IP Telephony originated from a traditional telephone set, the local carrier first converts the voice call from analog to digital. The digital call is sent to a gateway that takes the digital voice signal and converts or packages it into data packets. These data packets are like envelopes with addresses which "carry" the signal across a network until they reach their destination, which is known by the address on the data packet, or envelope. This destination is another gateway, which reassembles the packets and converts the signal to analog, or a plain old telephone call to be terminated on the called party's local telephone company's lines.

To explain it another way, Phone-to-Phone IP Telephony is where an end user customer uses a traditional telephone set to call another traditional telephone set using IP Telephony. The fact that IP

technology is used, at least in part, to complete the call is transparent to the end user. Phone-to-Phone IP Telephony is identical, by all relevant regulatory and legal measures, to any other basic telecommunications service, and should not be confused with calls to the Internet through an ISP. Characteristics of Phone-to-Phone IP Telephony are:

- IP Telephony provider gives end users traditional dial tone (not modem buzz);
- End user does not call modem bank;
- Uses traditional telephone sets (vs. computer);
- Call routes using telephone numbers (not IP addresses);
- Basic telecommunications (not enhanced);
- IP Telephone providers are telephone carriers (not ISPs).

Phone-to-Phone IP Telephony should not be confused with Computer-to-Computer IP Telephony. Phone-to-Phone IP telephony involves a telephone call – one person picks up the phone and calls another person, who answers the phone and speaks with the first person. What makes that phone call an "IP Telephony" call is the fact that internet protocol (as opposed to circuit switching) is the protocol method that is used to transport the call from one phone to the other. Computer-to-Computer IP Telephony, on the other hand, is where two computer owners agree to establish a telecommunications path over the Internet using software on their computers. It does not involve a long distance carrier offering a telecommunications service to the public for a fee.

Q. WHAT IS INTERNET PROTOCOL?

A. Technically speaking, Internet protocol, or any other protocol, is an agreed upon set of technical operating specifications for managing and interconnecting networks. In the example above, I referred to the gateways that convert the digital carrier voice signal into data packets and then from data packets back to a digital carrier. The Internet protocol is the language, or signaling, that these gateways use to talk to each other. It has nothing to do with the transmission medium (wire, fiber, microwave, etc.) that carries the data packets between the gateways, but rather the gateways, or switches that are found on either end of that medium.

Q. SHOULD INTERNET PROTOCOL TELEPHONY ("IP TELEPHONY") BE DEFINED AS SWITCHED ACCESS?

A. It depends. Calls utilizing Internet Protocol that originate and terminate in the same local calling area should be treated like any other local call. BellSouth's position is that, if such traffic is truly local in nature, then it is not subject to switched access charges; but, instead, reciprocal compensation would apply. Applicable switched access charges, however, should apply to any traditional long distance telephone call regardless of whether Internet Protocol is used for a portion of the call.

Q. HOW ARE IP TELEPHONY CALLS DIFFERENT FROM INTERNET SERVICE PROVIDER (ISP) BOUND TRAFFIC?

A. Even though IP Telephony and ISP-bound traffic both have the word "Internet" in their name, they are completely different services and should not be confused. The FCC's April 10, 1998 Report to Congress states:

> *"The record... suggests... 'phone-to-phone IP telephony' services lack the characteristics that would render them 'information services' within the meaning of the statute, and instead bear the characteristics of 'telecommunication services'."*

Further, Section 3 of the Telecommunications Act of 1996 defines "telecommunications" as the

> *"transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."*

Thus, IP Telephony is telecommunications service, not information or enhanced service.

Q. DOES THE FCC VIEW ISP-BOUND TRAFFIC DIFFERENTLY THAN IP TELEPHONY IN TERMS OF APPLICABLE CHARGES?

A. Yes. Neither ISP-bound traffic nor long distance IP Telephony traffic is local traffic; however, the FCC has treated the two types of traffic differently in terms of the rates that such providers pay for access to the

local exchange company's network. ESPs, or ISPs, have been exempted by the FCC from paying access charges for use of the local network in order to encourage the growth of these emerging services – most specifically access to the Internet. The FCC has found that ESPs and ISPs use interstate access service, but are exempt from switched access charges applicable to other long distance traffic. Instead, ISP-bound traffic is assessed at the applicable business exchange rate. On the other hand, the transmission of long-distance voice services – whether by IP telephony or by more traditional means -- is not an emerging industry. In fact, it is a mature industry – one that is not exempt from paying access charges for the use of the local network. These same access charges are currently paid by all other long-distance carriers. BellSouth is required to assess access charges on long distance calls. To do otherwise would be to discriminate between long-distance carriers utilizing IP telephony and those who do not.

Q. WHY HAS BELLSOUTH INCLUDED AN EXCEPTION FOR LONG DISTANCE INTERNET PROTOCOL TELEPHONY ("IP TELEPHONY") IN ITS PROPOSED DEFINITION OF LOCAL TRAFFIC IN THE NEGOTIATIONS WITH ADELPHIA?

A. In seeking to include a sentence addressing IP telephony, BellSouth is simply attempting to be clear in the agreement that switched access charges, not reciprocal compensation, apply to phone-to-phone long distance calls that are transmitted using IP telephony. From the end

user's perspective, and, indeed from the interexchange carrier's ("IXC's") perspective, such calls are indistinguishable from regular circuit switched long distance calls. The IXC may use IP technology to transport all or some portion of the long distance call, but that does not change the fact that it is a long distance call.

Consider the example of a call from Columbia to Atlanta sent over Adelphia's circuit switched network. Certainly, this call is a long distance call, and access charges would apply. If Adelphia, however, transported that same call using IP telephony, Adelphia's position appears to be that the call from Columbia to Atlanta is a local call and that reciprocal compensation applies. Adelphia's choice of transport protocol methods, however, does not transform a long distance call into a local call.

Due to the increasing use of IP technology mixed with traditional analog and digital technology to transport voice long distance telephone calls, BellSouth's position is that it is important to specify in the agreement that such traffic is not local traffic, the same as any other long distance traffic is not local traffic.

Q. PLEASE COMMENT ON THE FCC's ALLEGED "HANDS-OFF" THE INTERNET APPROACH AND CHAIRMAN KENNARD'S RECENT QUOTES, DISCUSSED BY MR. GATES ON PAGES 36-39 OF HIS TESTIMONY.

A. In the quotes submitted by Mr. Gates, Chairman Kennard seems to be talking about services that use the Internet network. This issue, and what BellSouth is talking about, are services that are still using the LEC's network just like traditional long distance service.

Mr. Gates's discussion continues on describing Internet Protocol telephony as a service. This just is not the case. Internet Protocol telephony is a method of transmitting data, and should not be confused with the traffic being referred to in Issue #4.

Q. ON PAGE 33 OF HIS TESTIMONY, MR. GATES STATES, "BELLSOUTH'S LANGUAGE – 'IRRESPECTIVE OF THE TRANSPORT PROTOCOL METHOD USED, A CALL WHICH ORIGINATES IN ONE LOCAL CALLING AREA AND TERMINATES IN ANOTHER LOCAL CALLING AREA' – IS NOT LIMITED TO VOICE CALLS, AND COULD BE INTERPRETED TO DESCRIBE AN ISP-BOUND CALL." IS THIS STATEMENT CORRECT?

A. No. As I stated previously in my testimony, IP Telephony and ISP-bound traffic are not the same thing, and should not be confused. IP telephony is merely a transport protocol method. While a very small portion of providers using IP Telephony route such traffic over the Internet, or World Wide Web, most do not. The Internet is seldom utilized by IP Telephony providers because the large amount of traffic

flowing over the Internet results in a distorted voice quality due to delayed or even lost data packets. It is my understanding that Adelphia transports IP telephony over its own private network. This is no different from Adelphia choosing to use microwave facilities or any other method to transport a call. However, as I have stated, the method used to transport the call does not affect or change the jurisdiction of the call.

Q. WHAT IS BELLSOUTH ASKING THIS COMMISSION TO DECIDE ON THIS ISSUE?

A. BellSouth urges the Commission to defer a decision of whether IP Telephony is switched access until the FCC makes a decision on the interstate issue. BellSouth, however, also urges the Commission to find, on this issue, that regardless of the FCC's decision on switched access, reciprocal compensation is **not** due, under any circumstance, for non-local IP Telephony.

Issue 4 (Attachment 3, Section 6.1.1)

Should the parties be required to pay reciprocal compensation on traffic originating from or terminating to an enhanced service provider, including an Internet Service Provider ("ISP")?

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. As the Commission is well aware, reciprocal compensation should not apply to ISP-bound traffic. Based on the 1996 Act and the FCC's Local Competition Order, reciprocal compensation obligations under Section 251(b)(5) only apply to local traffic. ISP-bound traffic constitutes access service, which is clearly subject to interstate jurisdiction and is not local traffic. Adelphia has not provided any evidence to the contrary; therefore, BellSouth's position has not changed with respect to this issue in this proceeding.

Q. HAS THIS COMMISSION PREVIOUSLY RULED ON THIS ISSUE?

A. Yes. In Order No. 1999-690, Docket No. 1999-259-C, dated October 4, 1999 (ITC^DeltaCom arbitration with BellSouth), this Commission found at p. 66:

> *The Commission finds that ISP-bound traffic is non-local interstate traffic. As such, the Commission finds on a going-forward basis and for the purposes of this interconnection agreement that ISP-bound traffic is not subject to the reciprocal compensation obligations of the 1996 Act.*

Q. ON PAGES 49-51, MR. GATES DISCUSSES THE D.C. CIRCUIT COURT'S MARCH 24, 2000 DECISION VACATING THE FCC'S DECLARATORY RULING IN CC DOCKET 96-98. WHAT ARE THE IMPLICATIONS OF THE D.C. CIRCUIT'S DECISION ON THIS ISSUE?

A. On March 24, 2000, the D.C. Circuit Court of Appeals vacated the FCC's Declaratory Ruling and remanded it "for want of reasoned decision-making." (*Bell Atlantic Telephone Companies v. FCC, No. 99-1094)*("D.C. Order"). The D.C. Order does not find that the FCC's conclusions that ISP-bound traffic is non-local traffic is incorrect. In fact, in its decision, the D.C. Circuit recognized that, under the FCC's regulations, reciprocal compensation is due on calls to the Internet if, and only if, such calls "terminate" at the ISP's local facilities. The D.C. Order simply puts the burden back on the FCC to provide further documentation or reasoning for its decision. The D.C. Order states, "Because the Commission has not supplied a real explanation for its decision to treat end-to-end analysis as controlling, we must vacate the ruling and remand the case." Furthermore, even though the Declaratory Ruling is vacated, numerous other FCC decisions consistently found that ISP bound traffic is interstate in nature. Those rulings are not affected by the D.C. Order.

Moreover, the FCC has *already* addressed in a different recent order one of the primary concerns expressed in the D.C. Circuit opinion. Specifically, the D.C. Circuit concluded that the FCC had not sufficiently explained in the order under review why Internet service constituted "exchange access" and not "telephone exchange service." At the same time, however, the D.C. Circuit acknowledged that the "statute appears ambiguous as to whether calls to ISPs fit within 'exchange access' or

'telephone exchange service' and on that view any agency interpretation would be subject to judicial deference." *Order* at 15. The FCC, however, has explained in detail that calls to ISPs of the sort at issue here constitute interstate "exchange access" not "telephone exchange service." Order on Remand, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, FCC 99-413, 1999 WL 1244007, ¶ 43 (Dec. 23, 1999) ("Advanced Services December 23, 1999 Order"). The D.C. Circuit declined to consider that conclusion, however, because "[t]he Commission . . . did not make this argument in the ruling under review."

Q. HOW HAS THE JURISDICTION OF ISP TRAFFIC BEEN ADDRESSED BY THE FCC?

A. Throughout the evolution of the Internet, the FCC repeatedly has asserted that ISP-bound traffic is interstate. For instance, since 1983 the FCC has exempted ISPs from the payment of certain interstate access charges. The fact that the FCC created an exception to the application of usage sensitive interstate access charges to protect certain classes of customers, such as ISPs, makes it evident that the FCC considers such users as users of access services. Otherwise, such an exemption of access charges would not have been needed. *See MTS/WATS Market Structure Order,* 97 FCC 2d at 715.

Also, the FCC's *Notice of Proposed Rulemaking*, In the Matter of Amendments to Part 69 of the Commission's Rules Relating to

Enhanced Service Providers, CC Docket No. 87-215 ("1987 NPRM"), released July 17, 1987, in which the FCC proposed to lift the ESP access charge exemption, is clearly in keeping with the FCC's position on the interstate nature of ESP/ISP traffic. Paragraph 7 of that NPRM reads:

> *We are concerned that the charges currently paid by enhanced service providers do not contribute sufficiently to the costs of the exchange access facilities they use in offering their services to the public. As we have frequently emphasized in our various access charge orders, our ultimate objective is to establish a set of rules that provide for recovery of the costs of exchange access used in interstate service in a fair, reasonable, and efficient manner from all users of access service, regardless of their designation as carriers, enhanced service providers, or private customers. Enhanced service providers, like facilities-based interexchange carriers and resellers, use the local network to provide interstate services. To the extent that they are exempt from access charges, the other users of exchange access pay a disproportionate share of the costs of the local exchange that access charges are designed to cover.*
> (emphases added)

The resulting order in Docket No. 87-215 (the "ESP Exemption Order"), released in 1988, is further evidence of the FCC's continued pattern of

considering ISP-bound traffic to be access traffic. It referred to "certain classes of exchange access users, including enhanced service providers" (Paragraph 2, emphasis added).

Q. HAS THE FCC REITERATED ITS POSITION REGARDING THE JURISDICTION OF ISP BOUND TRAFFIC SINCE THE DECLARATORY RULING?

A. Yes. In its December 23, 1999 Order on Remand, an order that was not appealed, (see *Order on Remand In re: Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket Nos. 98-147) ("Order on Remand")*, the FCC stated at Paragraph 33:

> *As we have previously found in the Reciprocal Compensation Order, xDSL-based advanced services that are used to connect ISPs with their subscribers to facilitate Internet bound traffic typically constitute exchange access service because the call initiated by the subscriber terminates at Internet websites located in other exchanges, states, or foreign countries.*

Further, in the same Order on Remand, at ¶ 35, the FCC states,

> *The issue we address here is whether xDSL-based services may constitute exchange access under the Act. This question arises*

primarily in the context of services provided to ISPs to facilitate their provision of Internet access services. Applying the definitions contained in section 3 of the Act, we conclude that the service provided by the local exchange carrier to the ISP is ordinarily exchange access service because it enables the ISP to transport the communication initiated by the end-user subscriber located in one exchange to its ultimate destination in another exchange, using both the services of the local exchange carrier and in the typical case the telephone toll service of the telecommunications carrier responsible for the interexchange transport.

Additionally, BellSouth's ADSL service offering was filed and approved, by the FCC, in BellSouth's Tariff FCC Number 1. This is further evidence that ISP-bound traffic is exchange access service.

Q. BASED ON THE FCC'S DECISIONS, DOES DIAL-UP TRAFFIC TO INTERNET SERVICE PROVIDERS QUALIFY AS TRAFFIC WHICH IS ELIGIBLE FOR RECIPROCAL COMPENSATION?

A. No. Based on the Act and the FCC's August 1996 Local Interconnection Order (CC Docket No. 96-98), reciprocal compensation obligations under Section 251(b)(5) only apply to local traffic. ISP-bound traffic is access service subject to interstate jurisdiction and is not local traffic.

Q. HOW DO THE ACT AND THE FCC'S FIRST REPORT AND ORDER IN CC DOCKET 96-98 ADDRESS RECIPROCAL COMPENSATION?

A. Reciprocal compensation applies only when local traffic is terminated on either party's network. One of the Act's basic interconnection rules is contained in 47 U.S.C. § 251(b)(5). That provision requires all local exchange carriers "to establish reciprocal compensation arrangements for the transport and termination of telecommunications." Section 251(b)(5)'s reciprocal compensation duty arises, however, only in the case of local calls. In fact, in its August 1996 Local Interconnection Order (CC Docket No. 96-98), paragraph 1034, the FCC made it perfectly clear that reciprocal compensation rules do not apply to interstate or interLATA traffic such as interexchange traffic:

> *We conclude that Section 251(b)(5), reciprocal compensation obligation, should apply only to traffic that originates and terminates within a local area assigned in the following paragraph. We find that reciprocal compensation provisions of Section 251(b)(5) for transport and termination of traffic do not apply to the transport and termination of interstate or intrastate interexchange traffic.*

The FCC's interpretation of reciprocal compensation applying only to local traffic is consistent with the Act, which established a reciprocal compensation mechanism to encourage local competition.

Q. IS BELLSOUTH'S POSITION REGARDING JURISDICTION OF ISP-BOUND TRAFFIC CONSISTENT WITH THE FCC'S FINDINGS AND ORDERS?

A. Yes. BellSouth's position is supported by, and is consistent with, the FCC's findings and Orders which state that, for jurisdictional purposes, traffic must be judged by its end-to end nature, and must not be judged by looking at individual components of a call. BellSouth's position is also consistent with the FCC's historical treatment of ISP traffic. Therefore, for purposes of determining jurisdiction for ISP-bound traffic, the originating location and the final termination must be looked at from an end-to-end basis. BellSouth's position is consistent with long-standing FCC precedent and has been reaffirmed numerous times. For example, in the December 23, 1999 Order on Remand, Footnote 73, the FCC lists its previous decisions in 1988, 1992, 1995 and 1997 reaching the same conclusion about the end-to-end nature of ISP traffic.

Q. WHAT IS BELLSOUTH REQUESTING OF THIS COMMISSION?

A. BellSouth is asking the Commission to find in this case, as in the ITC^DeltaCom case, that ISP-bound traffic is not local traffic and is not subject to reciprocal compensation obligations contained in Section 251 of the Act.

Issue 5 (Attachment 3, Section 6.1.5)

Is BellSouth required to pay tandem charges when Adelphia terminates BellSouth local traffic using a switch serving an area comparable to a BellSouth tandem?

Q. PLEASE BRIEFLY EXPLAIN THIS ISSUE.

A. The network components potentially involved in the transport and termination of local traffic are end office switching, interoffice transport and tandem switching. However, all three components are not necessarily involved in every local call. BellSouth proposes to bill CLECs for use of a tandem only when BellSouth incurs the cost of tandem switching. Further, BellSouth proposes to pay CLECs the tandem switching rate only when the CLEC's switch provides the geographic coverage and functionality of a tandem, as opposed to an end office switch. However, once Adelphia meets the geographic coverage test, it wants to charge BellSouth for tandem switching on every local call, regardless of whether Adelphia switch is performing tandem switching functions.

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. In order for Adelphia to appropriately charge BellSouth for tandem switching on any call, Adelphia must demonstrate to the Commission that: 1) its switches serve a comparable geographic area to that served by BellSouth's tandem switches and that 2) its switches perform local tandem functions. Even after meeting the above criteria, Adelphia should only be compensated for the functions that it actually provides. Adelphia is only entitled to charge for tandem switching on the calls that are in fact switched by the tandem. Adelphia is not entitled to tandem switching compensation on local calls not switched by a local tandem, even if Adelphia has a local tandem.

The FCC has outlined a test for the tandem switching charge, including both a geographic component and a functional component, and that test is supported by the Court discussions contained in this testimony. Each CLEC must make its own showing, based on its own network configuration and functionality, that it satisfies the requirements of that test. At present, Adelphia is not even attempting to show that its switch serves a geographic area comparable to BellSouth's tandem or provides functions comparable to BellSouth's tandem. Until Adelphia demonstrates before this Commission that it has met the requirements of the FCC, it should not be awarded the Tandem Switching Charge.

Q. PLEASE DESCRIBE ADELPHIA'S POSITION ON THIS ISSUE.

A. Adelphia is not attempting to demonstrate whether its switch in South Carolina presently serves a geographic area comparable to that of BellSouth's tandem. However, Adelphia's position appears to be that once it unilaterally declares that its local switch covers a geographic area comparable to BellSouth's tandem, the compensation BellSouth pays Adelphia for the transport and termination of BellSouth-originated traffic must always include the tandem switching rate element, even if Adelphia performs no tandem switching functions. As such, Adelphia's position totally disregards the FCC's second criterion for qualifying for tandem switching compensation – that Adelphia's switch actually perform a tandem function on the call in order to bill tandem switching for the call.

Q. ON PAGES 65-66 OF MR. GATES' TESTMONY, HE DISCUSSES FCC RULE 51.711(a) COULD YOU RESPOND TO THIS TESTIMONY?

A. Yes. Mr. Gates emphasizes subpart (3) of the rule, but he simply ignores subpart (1) of the rule. Subpart (1) clearly states that symmetrical rates assessed by a CLEC upon an ILEC for transport and termination of local traffic are equal to the rates "that the incumbent LEC assesses upon the other carrier for the same services." (emphasis added) "Same services" equates to the same functions that the ILEC performs to transport and terminate the CLEC's originating local traffic.

Adelphia, therefore, is only entitled to impose tandem switching charges upon BellSouth when Adelphia both: (1) actually performs the tandem switching function for local calls; and (2) actually serves an area geographically comparable to the area served by Bellsouth's tandem switch to terminate a local call originating from a BellSouth end user. Similarly, BellSouth may only seek recovery of tandem switching charges from Adelphia when BellSouth performs the tandem switching function to terminate a local call originating from an Adelphia end user.

Q. WHAT IS THE BASIS FOR BELLSOUTH'S POSITION ON THIS ISSUE?

A. Under Section 251(b)(5) of the 1996 Act, all local exchange carriers are required to establish reciprocal compensation arrangements for the transport and termination of telecommunications. 47 U.S.C. § 251(b)(5).

The terms and conditions for reciprocal compensation must be "just and reasonable," which requires the recovery of a reasonable approximation of the "additional cost" of terminating calls that originate on the network of another carrier. 47 U.S.C. § 252(d)(2)(A). The FCC's rules limited this obligation to local traffic. In its Local Competition Order, the FCC stated that the "additional costs" of transporting and terminating traffic vary depending on whether or not a tandem switch is involved. (¶ 1090) As a result, the FCC determined that state commissions can establish

transport and termination rates that vary depending on whether the traffic is routed through a tandem switch or directly to a carrier's end-office switch. *Id.* To this end, BellSouth has separate rates for local switching, transport and tandem switching. The CLEC is charged reciprocal compensation for transport and termination within the local calling area based on the parts of BellSouth's network that are actually used to complete a call.

The FCC, of course, recognized that the CLECs might not use the same network architecture that BellSouth or any other incumbent carrier uses. However, that concern is not an issue in this case. In order to ensure that the CLECs would receive the equivalent of a tandem switching rate if it were warranted, the FCC directed state commissions to do two things. First, the FCC directed state commissions to "consider whether new technologies (e.g., fiber ring or wireless network) performed functions similar to those performed by an incumbent LEC's tandem switch and thus whether some or all calls terminating on the new entrant's network should be priced the same as the sum of transport and termination via the incumbent LEC's tandem switch." (Local Competition Order ¶ 1090) (emphasis added). Further, the FCC stated that "[w]here the interconnecting carrier's switch serves a geographic area comparable to that served by the incumbent LEC's tandem switch, the appropriate proxy for the interconnecting carrier's additional costs is the LEC tandem interconnection rate." *Id.*

Therefore the FCC posed two requirements before a CLEC would be entitled to compensation at both the end office and tandem switching rate for any particular local call. The switch involved has to serve the appropriate geographic area, and it has to perform tandem switching functions for local calls. BellSouth notes that in Rule 51.711(a)(1) of its Local Competition Order, the FCC states that "symmetrical rates are rates that a carrier other than an incumbent LEC assesses upon an incumbent LEC for transport and termination of local telecommunications traffic equal to those that the incumbent LEC assesses upon the other carrier for the same services." (emphasis added) Again, in Rule 51.711(a)(3), the FCC states that "[w]here the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate."

Therefore, pursuant to Rule 51.711, Adelphia must show not only that its switch covers the same geographic area as BellSouth's tandem switch but that Adelphia's switch is providing the same services as BellSouth's tandem switch for local traffic before charging BellSouth the tandem switching rate.

Q. HAS THE FCC DEFINED WHAT FUNCTIONS A TANDEM SWITCH MUST PROVIDE?

A. Yes. In its Order No. FCC 99-238, the FCC's rules at 51.319(c)(3) state:

> Local Tandem Switching Capability. The tandem switching capability network element is defined as:
>
> (i) Trunk-connect facilities, which include, but are not limited to, the connection between trunk termination at a cross connect panel and switch trunk card;
>
> (ii) The basic switch trunk function of connecting trunks to trunks; and
>
> (iii) The functions that are centralized in tandem switches (as distinguished from separate end office switches), including but not limited, to call recording, the routing of calls to operator services, and signaling conversion features.

Q. HOW DOES THE FCC'S DEFINITION OF TANDEM SWITCHING APPLY TO THIS ISSUE?

A. To receive reciprocal compensation for tandem switching, a carrier must be performing all of the functions described in the FCC's definition of tandem switching. It is not enough that the switch is simply "capable" of providing the function of a tandem switch, it has to be providing those functions for local calls. This is true if for no other reason than because the reciprocal compensation rate for tandem switching is the same as the UNE rate for tandem switching. That rate recovers the cost of

performing, for local calls, the functions described in the FCC's definition. Otherwise, the carrier would simply be receiving a windfall.

If Adelphia's switch is only switching traffic for end users directly connected to that switch, then that is an end office switching function, not a tandem switching function. As stated in the FCC's definition, one of the three requirements of tandem switching is to connect trunks terminated in one end office switch to trunks terminated in another end office switch. Based on the limited information presently available to BellSouth, it does not appear that Adelphia's switches will be providing that function, once they are turned up. Instead, Adelphia's switches apparently will be connecting trunks to end users' lines. The local end office switching rate fully compensates Adelphia for performing this function. It is not clear whether Adelphia's switches will perform the other two required functions (common transport or tandem switching), or whether they will serve a comparable geographic area.

Q. PLEASE ADDRESS WHETHER THE ONLY RELEVANT CRITERION FOR DETERMINING ELIGIBILITY FOR TANDEM SWITCHING CHARGES IS THE GEOGRAPHIC AREA SERVED.

A. As I have stated above, the FCC has a two-part test to determine if a carrier is eligible for tandem switching: 1) a CLEC's switch must serve the same geographic area as the ILEC's tandem switch, and 2) a CLEC's switch must perform tandem switching functions. By the way,

this is not just BellSouth's view. In a case involving MCI (MCI Telecommunication Corp. v. Illinois Bell Telephone, 1999 U.S. Dist. LEXIS 11418 (N.D. Ill. June 22, 1999)), the U.S. District Court specifically determined that the test required by the FCC's rule is a functionality/geography test. In its Order, the Court stated:

> *In deciding whether MCI was entitled to the tandem interconnection rate, the ICC applied a test promulgated by the FCC to determine whether MCI's single switch in Bensonville, Illinois, performed functions similar to, and served a geographical area comparable with, an Ameritech tandem switch.*[9] (emphasis added)
>
> [9]*MCI contends the Supreme Court's decision in IUB affects resolution of the tandem interconnection rate dispute. It does not. IUB upheld the FCC's pricing regulations, including the 'functionality/geography' test. 119 S. Ct. at 733. MCI admits that the ICC used this test. (Pl. Br. At 24.) Nevertheless, in its supplemental brief, MCI recharacterizes its attack on the ICC decision, contending the ICC applied the wrong test. (Pl. Supp. Br. At 7-8.) But there is no real dispute that the ICC applied the functionality/geography test; the dispute centers around whether the ICC reached the proper conclusion under that test.* (emphasis added)

Indeed, the Ninth Circuit Court of Appeals viewed the rule in the same way, finding that:

> *[t]he Commission properly considered whether MFS's switch performs similar functions and serves a geographic area comparable to US West's tandem switch.* (U.S. West Communications v. MFS Intelenet, Inc, et. al, 193 F. 3d 1112, 1124)

Q. DO ADELPHIA'S SWITCHES SERVE A GEOGRAPHIC AREA COMPARABLE TO BELLSOUTH'S TANDEM?

A. There is no way of knowing that, because Adelphia has not yet deployed a switch in South Carolina. In fact, Adelphia is not asking the Commission to authorize it to charge BellSouth a tandem rate at this time. However, Adelphia has proposed contract language which apparently would entitle it to charge the tandem switching rate based solely on its unilateral determination that it meets geographic coverage test. This prong of the test requires a demonstration that Adelphia's switch is actually serving a comparable geographic area. To illustrate the importance of this point, assume Adelphia has ten customers in Columbia, all of which are located in a single office complex next door to Adelphia's Columbia switch. Under no set of circumstances could Adelphia seriously argue that, in such a case, its switch serves a comparable geographic area to BellSouth's switch. See Decision 99-

09-069, In re: Petition of Pacific Bell for Arbitration of an Interconnection Agreement with MFS/WorldCom, Application 99-03-047, 9/16/99, at 15-16 (finding "unpersuasive" MFS's showing that its switch served a comparable geographic area when many of MFS's ISP customers were actually collocated with MFS's switch).

Even if an Adelphia switch ever does serve a geographic area similar to BellSouth's tandem, Adelphia may charge BellSouth the tandem switching element of reciprocal compensation only when that switch actually performs tandem functions.

Q. WHAT DOES BELLSOUTH REQUEST THE COMMISSION DO?

A. BellSouth is not disputing Adelphia's right to compensation at the tandem rate where the facts support such a conclusion. In this proceeding, however, Adelphia is seeking a decision that would allow it to be compensated for services it does not provide. Until Adelphia is able to demonstrate that its switches actually serve the same geographic area as BellSouth's tandems, and that Adelphia's switches actually perform the functions of a tandem switch, BellSouth requests that this Commission determine that Adelphia is only entitled to the end office switching rate when it provides local switching. Further the Commission should require Adelphia to make a subsequent evidentiary showing that it does, in fact, serve the same geographic area as

BellSouth's tandems, and perform comparable tandem switching functions.

Issue 6: (Attachment 3, Sections 1.5, 1.6 and 1.7)

How should the parties define the Points of Interface for their networks?

Q. WHAT IS THE ESSENCE OF THE DISPUTE BETWEEN THE PARTIES ON THIS ISSUE?

A. The issue is straight forward. BellSouth has a local network in each of the local calling areas it serves in South Carolina. BellSouth may have 10 or 20 or even more such local networks in a given LATA. For example, the Columbia, South Carolina LATA has 16 local calling areas. Nevertheless, Adelphia wants to interconnect its network with BellSouth's "network" in each LATA at a single point. This approach simply ignores that there is not one "network" but a host of networks that are generally all interconnected. Importantly, BellSouth does not object to Adelphia designating, for Adelphia originated traffic, a single Point of Interface at a point in a LATA on one of BellSouth's "networks," and only building its own facilities up to that point. Further, BellSouth does not object to Adelphia using the interconnecting facilities between BellSouth's "networks" to have calls delivered or collected throughout the LATA. What BellSouth wants (and this is the issue) is for Adelphia to pay when it uses BellSouth's network in lieu of building its own network to deliver or collect these calls.

To contrast its position with BellSouth's, Adelphia expects BellSouth to collect Adelphia's local traffic in each of BellSouth's 10 or 20 local calling areas in the LATA and to be financially responsible for delivering traffic destined for Adelphia local customers in each of those local calling areas to a single point in each LATA. To reiterate, BellSouth believes that Adelphia can choose to build its own facilities to connect with BellSouth at a single technically feasible point in the LATA selected by Adelphia. However, Adelphia cannot impose a financial burden on BellSouth to deliver BellSouth's originating traffic to that single point. If Adelphia wants calls completed between BellSouth's customers and Adelphia's customers using this single Point of Interconnection, that is fine, provided that Adelphia pays for the additional costs Adelphia causes.

Q. PLEASE DEFINE "POINT OF INTERFACE" AS USED IN THESE ISSUES.

A. The term Point of Interface is used in the Agreement, and in this issue, to describe the point where the two networks physically connect. With respect to the dispute in this issue, such point is defined by the FCC as the Point of Interconnection. In its First Report and Order, at paragraph 176, the FCC defined the term "interconnection" by stating that:

We conclude that the term "interconnection" under section 251(c)(2) refers only to the physical linking of two networks for the mutual exchange of traffic.

Therefore, the term "Point of Interconnection" is simply the place, or places, on the ILEC's network where that physical linking of Adelphia's and BellSouth's networks takes place. Simply speaking, the Point of Interconnection is the place where facilities that Adelphia builds connects to facilities built by BellSouth. Thus, I will use the term Point of Interface (POI) in my testimony to discuss this issue.

Q. HOW HAS THE FCC ADDRESSED THE ISSUE OF WHO ESTABLISHES THE POINT OF INTERCONNECTION?

A. The FCC addressed this issue in its Local Competition Order, in Section IV. In that Section, the FCC established the concept that, due to reciprocal compensation being paid by the originating company, the originating company may seek to determine its Point of Interconnection in order to minimize its reciprocal compensation obligation to the terminating company. For example, in Subsection F, Technically Feasible Points of Interconnection, ¶ 209, the FCC states:

We conclude that we should identify a minimum list of technically feasible points of interconnection that are critical to facilitating entry by competing carriers. Section 251 (c) gives competing carriers the right to deliver traffic terminating on an incumbent

LEC's network at any technically feasible point on that network rather than obligating such carriers to transport traffic to less convenient or efficient interconnection points. Section 251(c)(2) lowers barriers to competitive entry for carriers that have not deployed ubiquitous networks by permitting them to select the points in an incumbent LEC's network at which they wish to deliver traffic. Moreover, because competing carriers must usually compensate incumbent LECs for the additional costs incurred by providing interconnection, competitors have an incentive to make economically efficient decisions about where to interconnect.

This ruling requires the CLEC to establish a Point of Interconnection on the incumbent LEC's network and only permits the CLEC to designate that point for traffic originated by the CLEC. It does not allow the CLEC to specify a Point of Interconnection for traffic originated on the incumbent LEC's network. The rationale of this ruling clearly requires the CLEC to deliver its traffic to the incumbent's network and supports the right of the originating carrier to specify the Point of Interconnection. Adelphia's proposed plan is contrary to this ruling by purporting to permit the terminating carrier to designate the Point of Interconnection.

Q. HOW HAS THE FCC ADDRESSED THE ILEC'S ABILITY TO DESIGNATE A POINT OF INTERCONNECTION FOR ITS ORIGINATING TRAFFIC?

This ruling does not give a CLEC the right to establish the Point of Interconnection for ILEC originated traffic as MCI sought to do. It also rejects an attempt by MCI to interconnect at some place other than the ILEC's existing local network.

Q. ON PAGE 69 OF HIS TESTIMONY, MR. GATES STATES, "THE ILEC SHOULD NOT BE PERMITTED TO IMPOSE INTERCONNECTION REQUIREMENTS ON CLECS THAT REQUIRE CLECS TO DUPLICATE THE ILEC'S LEGACY NETWORK ARCHITECTURE." DOES BELLSOUTH'S POSITION MEAN THAT ADELPHIA HAS TO BUILD ITS NETWORK TO EVERY LOCAL CALLING AREA, OR OTHERWISE HAVE A POINT OF INTERFACE WITH BELLSOUTH'S LOCAL NETWORK IN EVERY LOCAL CALLING AREA?

A. No. Adelphia could build out its network that way if it chooses, but it isn't required to do so. It can lease facilities from BellSouth or any other provider to bridge the gap between its network (that is, where it designates its Point of Interface) and each BellSouth local calling area. Adelphia can pick any Point of Interface in the LATA that is technically feasible. It can choose to have one or more Points of Interface in the LATA. However, Adelphia cannot shift its financial responsibility for carrying local calls to BellSouth by choosing to have a single Point of Interface in each LATA.

Q. IF ADELPHIA CAN INTERCONNECT WITH BELLSOUTH'S NETWORK AT ANY TECHNICALLY FEASIBLE POINT, WHY IS THIS AN ISSUE?

A. Recall that what we are talking about here is interconnection with "local networks." BellSouth actually has a number of distinct networks. For example, BellSouth has local networks, intraLATA toll networks, packet networks, signaling networks, E911 networks, etc. Each of these networks is designed to provide a particular service or group of services. With regard to "local networks," BellSouth, in any given LATA, has several such local networks, usually interconnected by BellSouth's intraLATA network. For instance, in the Columbia LATA, BellSouth has local networks in Columbia, Barnwell, Orangeburg, Denmark, Newberry, etc. Customers who want local service in a particular local calling area must be connected to the local network that serves that local calling area. For example, a customer who connects to the Columbia local network won't receive local service in the Orangeburg local calling area because Orangeburg is not in the local calling area of Columbia. Likewise, a CLEC who wants to connect with BellSouth to provide local service in Orangeburg has to connect to the local network that serves the Orangeburg local calling area. BellSouth's local calling areas, I would add, have been defined and established over the years by this Commission.

According to Adelphia's Petition, Adelphia has not yet turned up its switch in South Carolina. However, assume that Adelphia deploys one switch in South Carolina, in the Columbia LATA. Therefore, for Adelphia to connect its customers in Orangeburg to BellSouth's customers in Orangeburg, Adelphia has to connect its switch in Columbia to BellSouth's local network in Orangeburg. Of course, the need for Adelphia to connect its switches to distant local calling areas is not unique to Columbia. Adelphia has to do the same thing to serve any of its customers located outside of the local calling area where its switch is located. To connect with BellSouth's customers in Greenville, South Carolina, for example, Adelphia would have to connect its Columbia switch to BellSouth's local network in Greenville.

Q. HOW WOULD ADELPHIA CONNECT TO BELLSOUTH'S LOCAL NETWORKS THAT ARE OUTSIDE THE LOCAL CALLING AREA WHERE ADELPHIA'S SWITCH IS LOCATED?

A. Adelphia has agreed to establish at least one Point of Interface in each LATA. Adelphia would build facilities from its switch to the Point of Interface in the LATA where the BellSouth local network is located. For example, to serve customers in the Columbia LATA, Adelphia would build from its switch in Columbia to a single POI in the Columbia LATA. When Adelphia chooses a single point in the Columbia LATA to interconnect with BellSouth, a couple of things happen. Assume Adelphia chooses to interconnect in the Columbia LATA at the

Columbia access tandem. That Columbia access tandem could be its sole Point of Interface with BellSouth's network in the Columbia LATA. BellSouth has no problem with this arrangement. BellSouth's customers in Columbia wanting to call Adelphia's customers located in the BellSouth Columbia local calling area could do so, and BellSouth would gladly transport the calls to the Columbia tandem. This network configuration is illustrated on Page 1 of Exhibit JAR-2 attached to my testimony. BellSouth would be financially responsible for taking a call from one of its subscribers located in the Columbia local calling area and delivering it to another point in the Columbia local calling area, the Adelphia Point of Interface.

That scenario, of course, is not the problem. The problem is that Adelphia wants BellSouth to provide facilities to serve all 16 local calling areas in the Columbia LATA (the Columbia LATA stretches from Camden to Allendale and from Whitmire to St. George) using that same single Point of Interface at the Columbia tandem at no charge to Adelphia. Suppose a BellSouth end user in Orangeburg wants to call an Adelphia end user in Orangeburg. The BellSouth customer picks up his or her telephone, and draws dial tone from BellSouth's Orangeburg switch. The BellSouth customer then dials the Adelphia customer. The call is routed from Orangeburg to Adelphia's Point of Interface in the Columbia LATA, which is collocated with the BellSouth access tandem. BellSouth provides these facilities from a location on BellSouth's Orangeburg local network to Adelphia's Point of Interface in Columbia.

Adelphia then carries the call to its switch in Columbia and connects to Adelphia's loop serving its customer in Orangeburg. This call routing is shown on Page 2 of Exhibit JAR-2.

Now, when that BellSouth customer in Orangeburg wants to call an Adelphia customer in Orangeburg, Adelphia wants BellSouth to pay for bringing the call from Orangeburg to Columbia, over whatever facilities BellSouth has or would have to build between those two points, and hand the call off to Adelphia in Columbia. It is the financial responsibility for hauling the local calls from a distant local calling area (e.g., Orangeburg) to Adelphia's Point of Interface (e.g., Columbia) that is the problem.

Q. WHY DO YOU SAY THAT ADELPHIA MUST PAY FOR THE FACILITIES THAT CARRY THESE CALLS FROM LOCAL CALLING AREAS THAT ARE DISTANT FROM THE POINT WHERE ADELPHIA HAS CHOSEN TO INTERCONNECT ITS NETWORK WITH BELLSOUTH'S?

A. That is the only approach that makes economic sense. The Act, as the Eighth Circuit determined, only requires an ILEC to permit a CLEC to interconnect with the ILEC's existing local network, stating that:

> *The Act requires an ILEC to (1) permit requesting new entrants (competitors) in the ILEC's local market to interconnect with the ILEC's existing local network and, thereby, use that network to*

compete in providing local telephone service (interconnection)....
(Eighth Circuit Court Order dated July 18, 2000, page 2)
(Emphasis added)

When Adelphia interconnects with BellSouth's local network in Columbia, it is not interconnecting with BellSouth's local network in Orangeburg. It is only interconnecting with the Columbia local network. The fact that it is entitled to physically interconnect with BellSouth at a single point cannot overcome the fact that the single Point of Interface cannot, by itself, constitute an interconnection with every single local network in the LATA.

Q. DO BELLSOUTH'S LOCAL EXCHANGE RATES COVER THESE ADDITIONAL COSTS?

A. No. In theory at least, the local exchange rates charged to BellSouth's local customers compensate BellSouth for hauling all calls from one point within a specific local calling area to another point in that same local calling area. I say "in theory" because, as the Commission knows, local exchange rates do not cover the cost of local service. Certainly the local exchange rates that BellSouth's customers pay were not intended to cover and, indeed, do not cover, the cost of hauling a local call from one Orangeburg customer to another Orangeburg customer by way of Columbia.

Indeed, if Adelphia is not required to pay for that extra transport which Adelphia's network design decisions caused, who will pay for it? The BellSouth calling party is already paying for its local exchange service, and certainly won't agree to pay more simply for Adelphia's convenience. Who does that leave to cover this cost? The answer is that there is no one else. Adelphia has caused this cost through its own decisions regarding the design of its network, it should be required to pay for this additional cost.

Q. DOES BELLSOUTH RECOVER ITS COSTS FOR HAULING LOCAL CALLS OUTSIDE THE LOCAL CALLING AREA THROUGH RECIPROCAL COMPENSATION CHARGES?

A. No. Significantly, the facilities discussed in this issue facilitate interconnection, and these costs are not covered in the reciprocal compensation charges for transport and termination. In paragraph 176 of FCC Order 96-325, the FCC clearly stated that interconnection does not include transport and termination ("[i]ncluding the transport and termination of traffic within the meaning of section 251(c)(2) would result in reading out of the statute the duty of all LECs to establish 'reciprocal compensation arrangements for the transport and termination of telecommunications' under section 251(b)(5)"). Reciprocal compensation charges apply only to facilities used for

transporting and terminating local traffic on the local network, not for interconnection of the parties' networks.

In the Orangeburg example, for instance, reciprocal compensation would only apply for the use of BellSouth's facilities within the Orangeburg local calling area. That is, reciprocal compensation would apply to the facilities BellSouth used within its Orangeburg local network to transport and switch an Adelphia originated call. Reciprocal compensation does not include the facilities to haul the traffic from Columbia to Orangeburg. Second, in the illustrations I have been using, BellSouth's customer originates the call. BellSouth does not receive reciprocal compensation for any calls that originate from BellSouth and terminate to Adelphia. However, Adelphia wants BellSouth to build facilities, at no charge, for calls in both directions.

Q. ON PAGE 69, MR. GATES STATES THAT "NEW ENTRANTS SHOULD BE FREE TO DEPLOY LEAST COST, FORWARD-LOOKING TECHNOLOGY." IS THE ARRANGEMENT THAT ADELPHIA PROPOSES EFFICIENT?

A. Adelphia claims that it is. This shouldn't be surprising, since Adelphia equates efficiency with what is the most economical for Adelphia. Of course, that is not an appropriate measure of efficiency. Indeed, to measure efficiency, the cost to every carrier involved must be considered because that is the cost that customers will bear.

Presumably, Adelphia has chosen its particular network arrangement because it is cheaper for Adelphia. A principal reason it's cheaper for Adelphia is because Adelphia expects BellSouth's customers to bear substantially increased costs that Adelphia causes by its network design. It simply doesn't make any sense for BellSouth to eat the cost of hauling a local Orangeburg call outside the local calling area just because Adelphia wants us to do so. Adelphia, however, wants this Commission to require BellSouth to do just that. If Adelphia bought these facilities from anyone else, Adelphia would pay for the facilities. However, Adelphia doesn't want to pay BellSouth for the same capability.

Adelphia's proposed method of hauling local traffic seeks to shift its costs to BellSouth and its customers. Instead of encouraging competition, Adelphia is asking BellSouth's customers to subsidize Adelphia's network. Competition is supposed to reduce costs to customers, not increase them. Competition certainly is not an excuse for enabling a carrier to pass increased costs that it causes to customers it doesn't serve. BellSouth requests that this Commission require Adelphia to bear the cost of hauling local calls outside BellSouth's local calling areas. Importantly, Adelphia should not be permitted to avoid this cost by its proposal.

Q. HAS THE FCC ADDRESSED THE ISSUE OF RECOVERING ADDITIONAL COSTS CAUSED BY A CLEC'S CHOSEN FORM OF INTERCONNECTION?

A. Yes. In its First Report and Order in Docket 96-325, the FCC states that the CLEC must bear those costs. Paragraph 199 of the Order states that "a requesting carrier that wishes a 'technically feasible' but expensive interconnection would, pursuant to section 252(d)(1), be required to bear the cost of the that interconnection, including a reasonable profit." Further, at paragraph 209, the FCC states that:

> *Section 251(c)(2) lowers barriers to competitive entry for carriers that have not deployed ubiquitous networks by permitting them to select the points in an incumbent LEC's network at which they wish to deliver traffic. Moreover, because competing carriers must usually compensate incumbent LECs for the additional costs incurred by providing interconnection, competitors have an incentive to make economically efficient decisions about where to interconnect.* (Emphasis added)

Thus, under the FCC's rules, a new entrant might establish POIs in each local calling area it intends to serve using its own facilities, or it might establish a single POI for an entire LATA, and lease interconnection facilities to transport traffic between a local calling area it intends to serve and the remote local calling area where its POI is located, depending on which arrangement is more cost efficient. What

Adelphia proposes to do, however, is to build a single POI for a LATA, and to require BellSouth to provide interconnection facilities at no charge to transport traffic between the local calling areas it serves and the local calling area where its POI is located.

Clearly, the FCC expected Adelphia to pay the additional costs that it causes BellSouth to incur. If Adelphia is permitted to shift those costs to BellSouth, it has no incentive to make economically efficient decisions about where to interconnect.

Q, ON PAGE 70, MR. GATES CITES THE FCC ORDER APPROVING SOUTHWESTERN BELL'S ENTRY INTO THE TEXAS LONG DISTANCE MARKET AS EVIDENCE THAT A CLEC HAS THE OPTION TO INTERCONNECT AT ONLY ONE TECHNICALLY FEASIBLE POINT IN EACH LATA. PLEASE COMMENT.

A. We agree that the FCC Order No. 00-238 (CC Docket No. 00-65, Released June 30, 2000 at paragraph 78) states that a CLEC has the option to interconnect at only one technically feasible point in each LATA. As stated in my direct testimony, Adelphia can pick any POI in the LATA that is technically feasible. It can choose one or more POIs in the LATA. However, Adelphia still has financial responsibility for getting to the local network where it wishes to serve customers; and BellSouth is not obligated to deliver at no charge its originating traffic to Adelphia's POI outside the local calling area where the calls originate.

Q. PLEASE COMMENT ON MR. GATES' CLAIM, AT PAGE 71, THAT CLECS HAVE THE RIGHT TO DESIGNATE POIS, BUT ILECS SUCH AS BELLSOUTH DO NOT.

A. Mr. Gates is incorrect. The FCC permits CLECs to designate a POI on the ILEC's network for traffic originated by the CLEC. It does not allow the CLEC to specify a POI for traffic originated on the ILEC's network. The POI for BellSouth's originated traffic is a single point in a local calling area to which BellSouth will deliver all of its customers' traffic to the CLEC. The traffic originated by all BellSouth customers in a local calling area would be transported by BellSouth to a single point in that local calling area at no charge to the CLEC. This point represents the highest degree of aggregation for the local calling area that BellSouth can provide to Adelphia. Assuming there is more than one wire center in the local calling area, Adelphia can then pick up all of BellSouth's traffic that originates in that local calling area at a single point rather than having to pick up the traffic at each individual wire center.

Mr. Gates claims that BellSouth doesn't have the authority to deliver its originated traffic in this manner, but I disagree. As stated earlier in my testimony, BellSouth has the right to establish a single POI in each local calling area for its originating traffic. If BellSouth didn't aggregate the traffic in this way, the cost to Adelphia likely would be higher. However, if Adelphia wants to pick up the traffic at each of BellSouth's end offices

instead of using the BellSouth designated POI, it certainly is free to do so.

Q. HOW DOES BELLSOUTH PROPOSE TO DELIVER ITS ORIGINATING LOCAL TRAFFIC TO ADELPHIA?

A. BellSouth proposes to aggregate all of its customers' originated local traffic to a single location in the local calling area where such traffic will be delivered to the CLEC. In the case of Orangeburg, for example, BellSouth would transport the local traffic originated by all BellSouth customers in the Orangeburg local calling area to a single location in the Orangeburg local calling area. Although this single location where BellSouth aggregates its customers' local traffic is not a Point of Interconnection as defined by the FCC, BellSouth uses the term "point of interface" or "point of interconnection" to describe that central location. Adelphia can then pick up all local traffic that BellSouth's customers originate in the Orangeburg local calling area at a single location rather than having to pick up the traffic at each individual end office.

However, Adelphia is not required to pick up traffic at the central point designated by BellSouth. If Adelphia chooses to do so, it can pick up traffic at each individual end office instead of at the "point of interface" designated by BellSouth.

Q. PLEASE COMMENT ON MR. GATES' IMPLICATION AT PAGES 72-73 THAT ADELPHIA'S ABILITY TO COMPETE WOULD BE HAMPERED BY ADELPHIA'S INABILITY TO OBTAIN FREE FACILITIES FROM BELLSOUTH.

A. Absolutely not. First, Adelphia does not have to build or purchase interconnection facilities to areas that Adelphia does not plan to serve. If Adelphia doesn't intend to serve any customers in a particular area, its ability to compete cannot be hampered.

Second, in areas where Adelphia does intend to serve customers, BellSouth is not requiring Adelphia to build facilities throughout the area. Adelphia can build facilities to a single point in each LATA and then purchase whatever facilities it needs from BellSouth or from another carrier in order to reach individual local calling areas that Adelphia wants to serve.

Third, any such claim is irreconcilable on its face. All carriers must bear their own costs of interconnection. In this respect, Adelphia would not be hindered from competing, as it would face the same choices with respect to how to arrange its network to minimize those costs as would any other carrier. Adelphia would be unfairly benefited, however, if it were permitted to shift its interconnection costs to BellSouth in the manner it proposes.

Q. WHAT DOES BELLSOUTH REQUEST OF THIS COMMISSION?

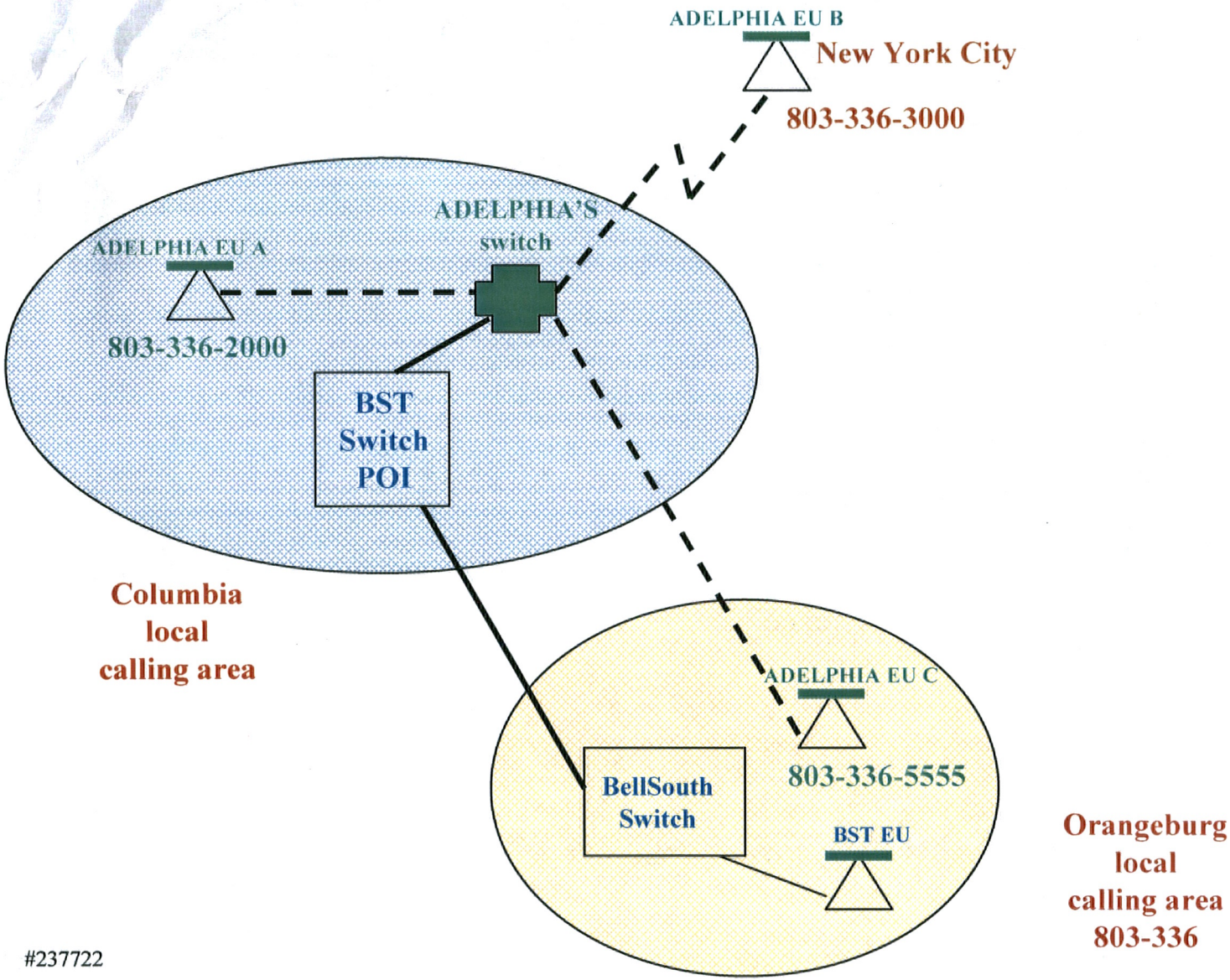
A. BellSouth simply requests that the Commission find that Adelphia is required to bear the cost of facilities that BellSouth installs on Adelphia's behalf in order to connect from a BellSouth local calling area to a Point of Interface located outside that local calling area. The Commission should reject Adelphia's proposal.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

DOCs # 237189

BellSouth Telecommunications Inc.
SCPSC Docket No. 2000-516-C
Exhibit JAR-1
Page 1 of 1
December 7, 2000



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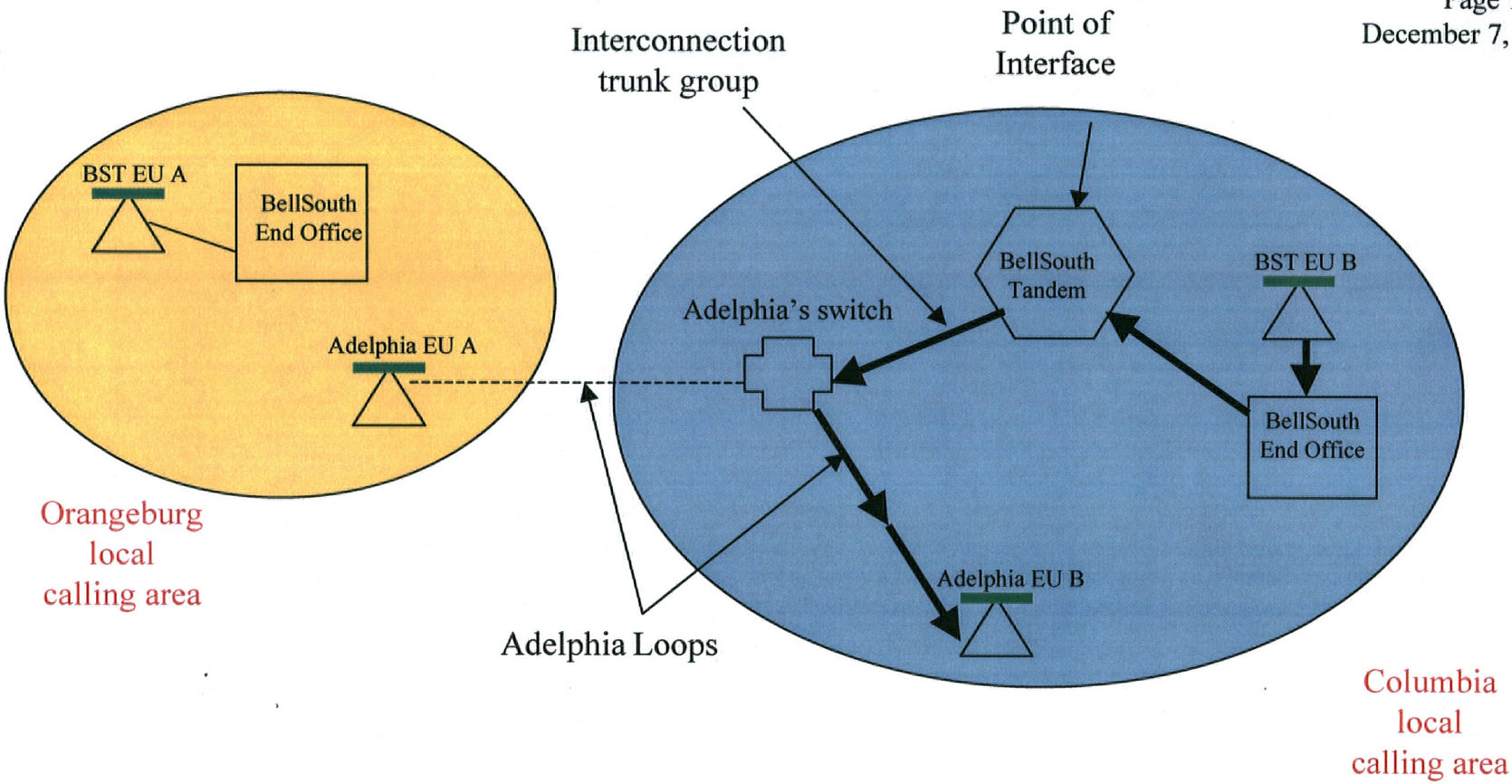

Local Call from Columbia BST EU to Columbia Adelphia EU

#237743

BellSouth Telecommunications Inc.
SCPSC Docket No. 2000-516-C
Exhibit JAR-2
Page 2 of 2
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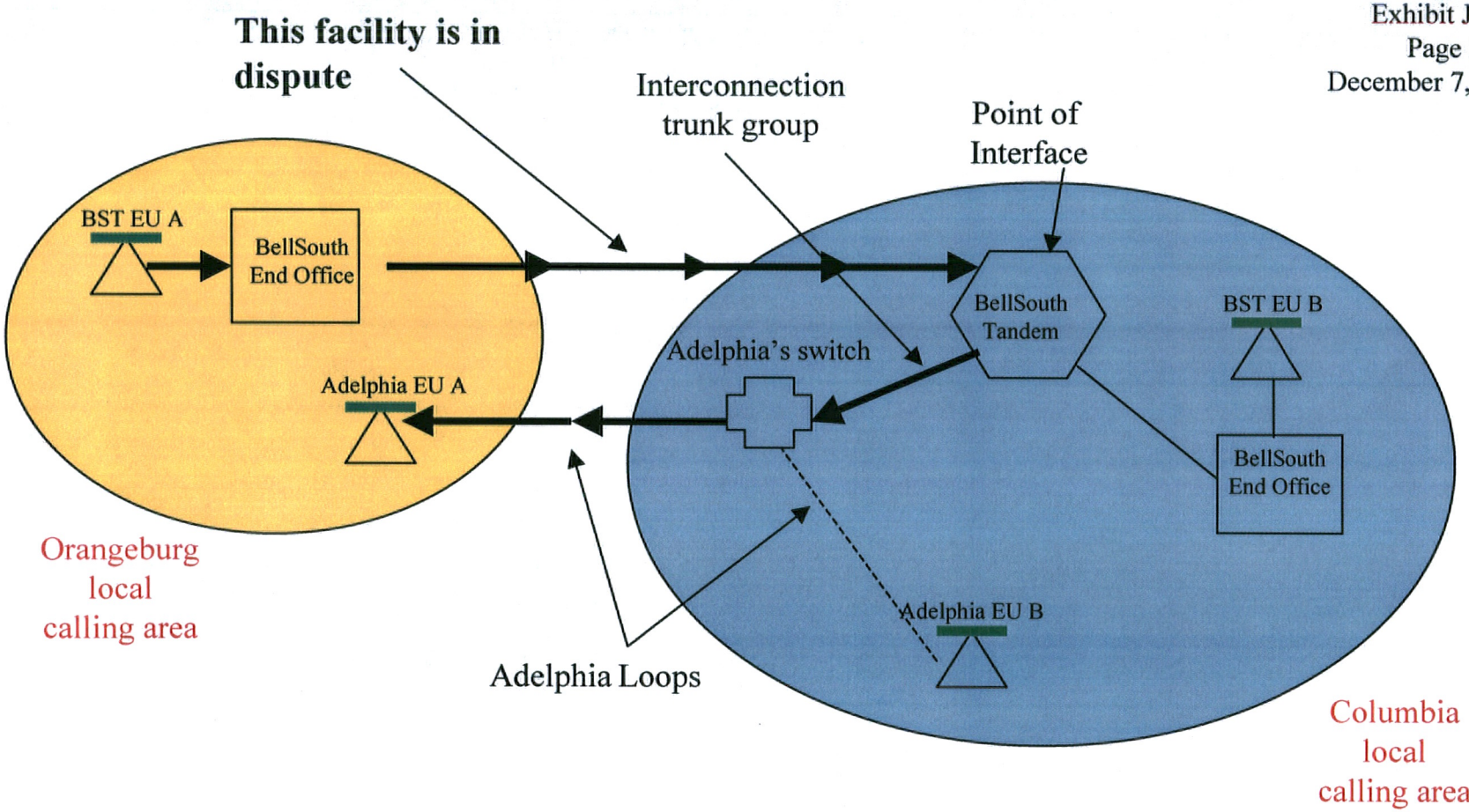

Local Call from Orangeburg BST EU to Orangeburg Adelphia EU

#237743

STATE OF SOUTH CAROLINA)
) CERTIFICATE OF SERVICE
COUNTY OF RICHLAND)

PERSONALLY APPEARED before me, Nyla M. Laney, who, being duly sworn, deposes and says that she is employed by the Legal Department for BellSouth Telecommunications, Inc. and that she has caused the Direct Testimony of John A. Ruscilli to be served this December 7, 2000 by the method indicated below each addressee listed:

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